IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-3985-2018

Date of Decision: March 21, 2018

Sandeep Rai

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. Kunal Dawar, Advocate for the Petitioner.

Mr. D.S.Sukarchakia, D.A.G. Punjab.

Mr. Parminder Singh-I Advocate for the complainant.

SUDIP AHLUWALIA, J.

This is an Application for Anticipatory Bail under Section 438 Cr.PC on behalf of Petitioner/accused Sandeep Rai in FIR No.234 dated 2.11.2017, registered at Police Station Division No.7, Jalandhar under Sections 406 and 420 of the IPC and Section 24 of Emigration Act, 1983.

2. The gist of allegations covered in the FIR lodged by one Sohan Singh happens to be that the Petitioner who is engaged in the business of sending workers and people abroad for employment, had under the pretext of sending his nephew Jaswinder Singh son of Roop Singh, and another person namely Jaswinder Singh Dhillon son of Sukhminder Singh to Germany as

Workers, usurped an amount of Rs.15,50,000/- from him. The Petitioner had allegedly assured to send both the boys to Germany within a month and acting on which belief the complainant delivered an amount of Rs.1,50,000/- to him with their Passports and the connected documents in return of which, the Petitioner allegedly gave him two receipt of Rs.50,000/- each. The Petitioner thereafter is alleged to have informed that he had obtained the Visas of both the boys and on his demand an additional amount of Rs.4,20,000/- was delivered to him by the complainant on 29.12.2016, after which, the Petitioner assured to deliver them the Visas at Jagraon. When the complainant party reached there he demanded another amount of Rs.71,000/- for the Air tickets. The Visas were however, for Dubai to Baku and the two boys left for these places on 28th and 30th of December 2016 after the complainant had given him Rs.71,000/- in cash for the Air tickets. The boys thereafter are reported to have called the complainant from Baku that they had been detained by the Petitioner's agent, who was forcing them to open their Bank Accounts, and it was represented to the complainant that those accounts had been opened to show money therein in the names of the boys. Consequently, the complainant's brother Roop Singh deposited Rs.3 lacs taken by him from the complainant's account on 20.01.2017 in the account of Jaswinder Singh Dhillon, and a month later, on 20.02.2017 he deposited another amount of Rs.5,60,000/- in the account of his own son Jaswinder Singh, which amount was also given to Roop Singh by the complainant. But the boys later told them that they had been apprehended by the Police in Baku and were to be sent back to India and were therefore, in need of money for air tickets. The complainant allegedly sent tickets of Rs.46,000/- for both the boys to enable them to return to India which they did and reached back on 12.05.2017. On being confronted, the Petitioner avoided the complainant's side, who thereafter approached the Police, and the Petitioner allegedly admitted his fault before the Police Post at Bus-Stand Jalandhar. Thereafter, his Advocate namely Mr. Ankit Hastir intervened and assured that the money paid by the complainant would be returned within a year and an agreement to that effect was also executed in the Police Station. Subsequently, on 21.06.2017 the complainant party visited the Petitioner's office but it was found under lock and key and even his Advocate was not traceable on account of which, the FIR was lodged with the allegation that the complainant's side had been duped of an amount of Rs.15,50,000/-.

3. Ld. Counsel for the Petitioner has denied all the material allegations in the FIR and has contended that the Petitioner never practiced any deception upon the complainant's side. It is the specific assertion of Petitioner's counsel that his client had taken appropriate steps to get the Visa Applications of two boys processed, but the Visa for the boy Jaswinder Singh was declined by the concerned country, since his Higher Secondary School Certificate was found to be suspicious/not genuine. It is the petitioner's further assertion that consequently the complainant's side themselves insisted on Visas for Azerbaijan via Dubai which were properly procured and delivered by the Petitioner. He has further denied that at any stage, the boys were apprehended or sought to be deported by the authorities

in Baku. To substantiate this contention, it has been highlighted that the accounts were opened in the name of boys themselves and allegations to that effect that his own representative in Azerbaijan by the name of Pappu Bangar had withdrawn their money and left them to faint for themselves, or had threatened or intimidated them in any manner, as could be gathered by the Police during their preliminary inquiry have been denied. It has further been submitted that admittedly the boys remained in Baku for almost five months and so the question of their not having been delivered a long term Visa is preposterous.

4. From the complainant's side, it has been submitted that both the boys are virtually illiterate having studied only upto Middle Class, and it was specifically asserted by the complainant that the alleged fake Mark Sheet of Jaswinder Singh Dhillon was created by the Petitioner himself with the assurance that it would help the boys to get the Working Visa in the concerned country.

5. Having gone through the available material in the Police Case Diary, it has emerged that neither the Petitioner in his application has mentioned any where about having arranged for any Work Permits for the two boys in any country whether Azerbaijan or Ukraine or even Germany as claimed by the complainant. It is a question of fact which may be determined after investigation as to which was the actual country to which the boys were agreed to be sent, but the fact that they were not granted any Work Permit even for the country where they actually reached is severally prejudicial to the Petitioner at this stage, and he cannot be allowed to wash his hands by

merely contending that it was the complainant's side which had changed its mind after being denied the original Visa for either Ukraine or Germany, or had volunteered to go to Azerbaijan instead.

6. At this preliminary stage of investigation therefore, it would appear that custodial interrogation of the Petitioner is actually warranted to understand the *modus operandi* by which the transaction in this particular case was effected since even the authorship of the alleged fake Higher Secondary School Certificate is a matter of serious debate between the complainant party and Petitioner.

7. For the above reasons at this stage, this Court does not see any tangible ground to favour the petitioner with the benefit of Anticipatory Bail u/s 438 Cr.PC, which undoubtedly is a remedy to be used in rare and very deserving cases.

Dismissed.

March 21, 2018 **(SUDIP AHLUWALIA)**
AS **JUDGE**

1. Whether speaking/ reasoned : Yes/ No
2. Whether reportable : Yes/ No